

Industrial Storm Water: Enforcement Trends, Citizen Suits, and Lessons Learned

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ROADMAP

- Industrial General Storm Water Permit (“IGP”)
 - Current Permit and Recent Changes
 - Citizen Suit Case Studies
 - Lessons Learned: “We know a thing or two because we’ve seen a thing or two.”
- Enforcement Summary

IGP: CURRENT PERMIT

- Permit in effect since July 1, 2015
- Expanded scope to thousands more facilities than were required to take action under the 1997 permit
- Requires reporting via SMARTS public database
- **Allows public access to data**

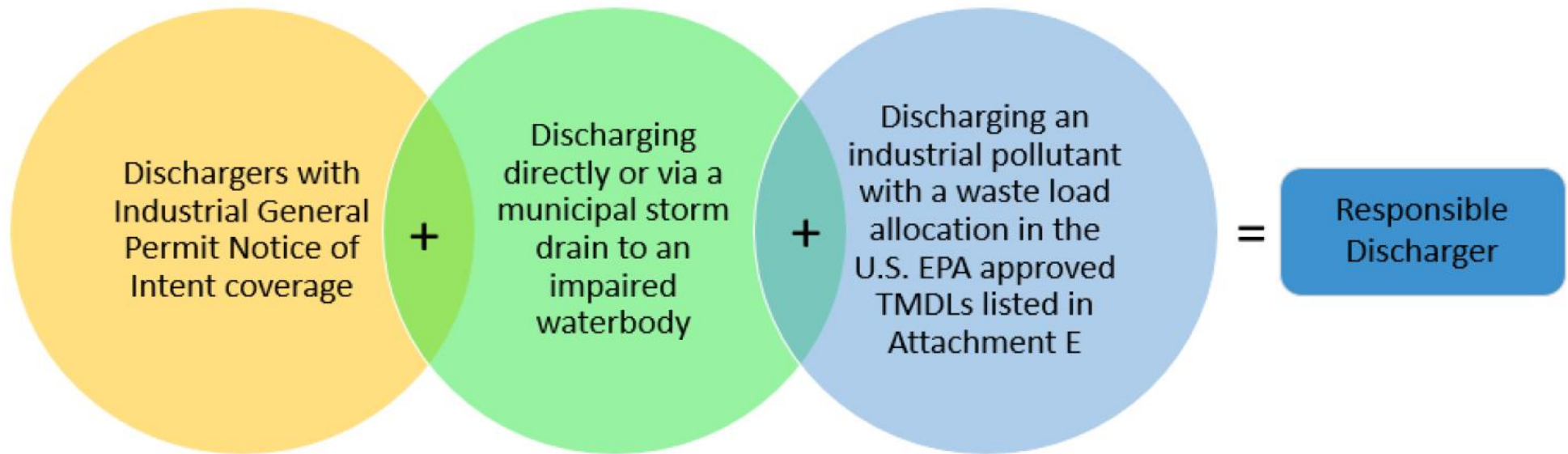
IGP: 2020 AMENDMENTS

- IGP amendment approved in November 2018
- Amendments cover three items:
 - Implementation of adopted Total Maximum Daily Loads (“TMDLs”)
 - Federal Sufficiently Sensitive Test Method Ruling
 - Statewide Compliance Options
- Effective on July 1, 2020

IGP: 2020 AMENDMENTS

- Adoption of TMDL-specific Numeric Action Levels (TNALs) and Numeric Effluent Limitations (NELs) applicable to discharges to water bodies for which industrial storm water waste load allocations (WLAAs) have been assigned
- “Responsible Dischargers” will be required to comply with the new TMDL-specific discharge requirements

IGP: 2020 AMENDMENTS



- Source: State Board FAQs re IGP Amendment (Sept. 26, 2018)

IGP: 2020 AMENDMENTS

- Regions currently affected:
 - Los Angeles (Region 4) – 26 TMDLs
 - San Diego (Region 9) – 7 TMDLs
 - Bay Area (Region 2) – 3 TMDLs
 - Santa Ana (Region 8) – 1 TMDL

- Source: Attachment E to 2018 IGP Amendment

IGP: 2020 AMENDMENTS

- Incorporates federally required testing methods adopted by EPA in 2014
- Specifically, Dischargers must use analytical test methods that are sufficiently sensitive to measure or detect pollutants at or below the applicable water quality criteria, action level, or effluent limitation

IGP: 2020 AMENDMENTS

- Compliance options incentivizing storm water capture:
 - On-site capture and use, and/or infiltration of industrial storm water discharges, up to and including the 85th percentile 24-hour daily storm volume; **or**
 - Participation in agreements to capture and use, and/or infiltrate industrial storm water discharges, up to and including the 85th percentile 24-hour daily storm volume, off-site as approved by the applicable RWQCB

IGP: CITIZEN SUITS

- “Any citizen” can sue for alleged IGP violations
- Process and observations:
 - 60-day Notice of Intent to Sue
 - Citizen suits used to acquire information about company operations
 - Site inspections
 - Document requests
 - Reports

IGP: CITIZEN SUITS

- “We know a thing or two because we’ve seen a thing or two.”



- First citizen suit in 1997 – California Sportfishing Protection Alliance – challenging abandoned mining properties in the Sierra Foothills
 - No SMARTS
 - Fewer suits

IGP: CITIZEN SUIT CASE STUDIES

- **“Ripped from the headlines.”**
- *Environmental Defense Center v. Vintage Production California LLC*, Case No. CV12-4030 JAK (SSx) (C.D. Cal.)
- Newspaper article on hydraulic fracturing at the Grubb-Rincon Oil Field
- *End result:* Consent Decree with Commitment that oil company would not use hydraulic fracturing in the oil field

IGP: CITIZEN SUIT CASE STUDIES

- **“No good deed goes unpunished.”**
- *San Joaquin Raptor Rescue Center and Protect Our Water v. XYZ Manufacturing Co., LLC*, Case No. 1:18-cv-00522-DAD-SKO (E.D. Cal.)
- Level 2 ERA and everything done according to permit – publicly available on SMARTS
- *End result:* Consent Decree with an Action Plan to look over company’s shoulder

IGP: CITIZEN SUIT CASE STUDIES

- **“Quid Pro Quo Harassment.”**
- *Environmental Defense Center v. California Resources Production Corporation*, Case No. 2:16-cv-02325-GW-RAO (C.D. Cal.)
- Trust for Public Lands attempting to secure conservation easement over lands in which defendant owned mineral rights that could be developed in future
- *End result:* Consent Decree with an option to later acquire surface rights to limit mineral development on unrelated lands

IGP: CITIZEN SUIT CASE STUDIES

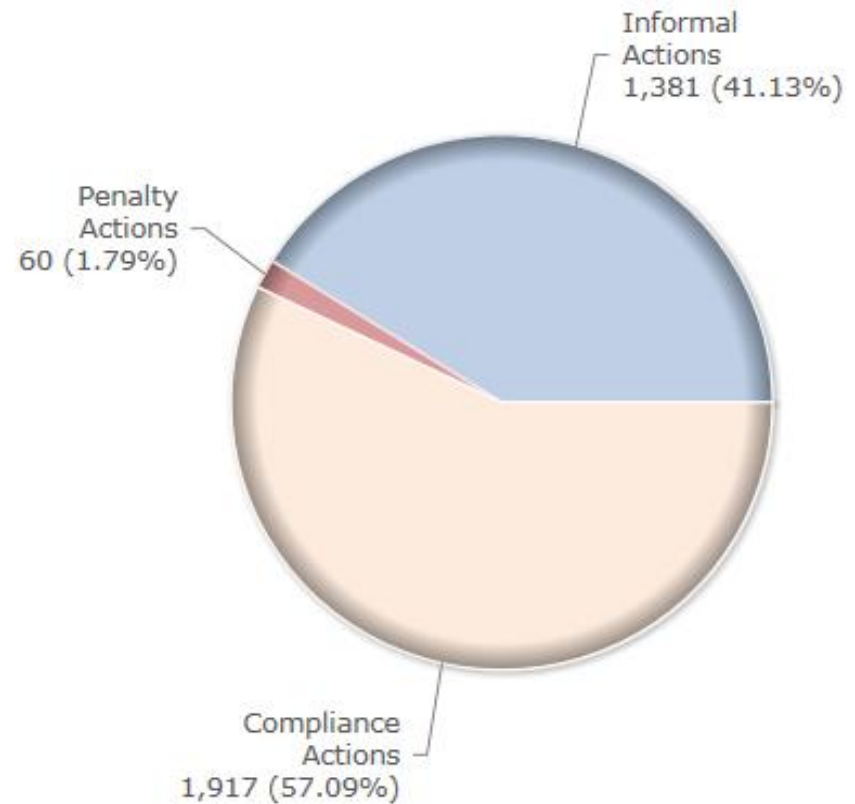
- **“If you can’t beat ’em, join ’em.”**
- *Puget Soundkeeper Alliance v. Pierce County Recycling, Composting and Disposal LLC, et al.*, Case No. C17-5731-BHS (W.D. Wash.)
- Puget Soundkeeper brought suit concerning violations at landfill that were difficult and costly to correct and refused to settle
- *End result:* Brought matter to state regulators and negotiated an agreed-upon order with the state that mooted most of the plaintiff’s action

IGP: CITIZEN SUITS, LESSONS LEARNED

- SMARTS exposes all of your dirty laundry to potential plaintiffs
- Know your enemies
- If you are sued, try to find out what is motivating the lawsuit – usually it is something besides your compliance with the IGP
- Don't be afraid to involve state regulators if you are being extorted by an abuse of the citizen suit provision

STATEWIDE ENFORCEMENT OVERVIEW FY 2017-18 (IGP & CGP)

- # of Informal Actions: 1,381
- # of Compliance Actions: 1,917
- # of Penalty Actions: 60



STATEWIDE ENFORCEMENT OVERVIEW FY 2017-18 (IGP & CGP)

Region	Enforcement Actions			Total
	Informal Actions	Compliance Actions	Penalty Actions	
1	3	0	0	3
2	40	1	5	46
3	128	163	7	298
4	537	321	6	864
5	224	677	0	901
6	23	296	0	319
7	0	15	0	15
8	245	444	41	730
9	181	0	1	182
TOTAL	1,381	1,917	60	3,358

STATEWIDE ENFORCEMENT OVERVIEW FY 2017-18 (IGP & CGP)

- **Data Source:** CIWQS and SMARTS Period: July 1, 2017 to June 30, 2018
- **Unit of Measure:** Number of enforcement actions with an effective date during FY 2017-18 issued for violations of the Construction Storm Water permit and the Industrial Storm Water permit
- [Source \(slides 17-19\):](https://www.waterboards.ca.gov/about_us/performance_report_1718/enforce/31201_npdes_sw_enf_actions.html)
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IGP: ENFORCEMENT OVERVIEW REGION 5 (07/01/18 – 06/30/19)

- Statewide INDSTW violations from July 1, 2018 to June 30, 2019: **1868**
- Central Valley Regional Board (Region 5) violations: **324**
 - Sacramento (268), Redding (8), Fresno (48)
- <https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?inCommand=reset&reportName=PublicVioSummaryReport> [Search: region, INDSTW, date range 07/01/18 - 06/30/19; accessed 10/27/19]

IGP: ENFORCEMENT OVERVIEW, REGION 5 (07/01/18 – 06/30/19)

- 289 are Class 3 violations for first time or infrequent violators
 - Pose a minor threat to water quality
 - Include statutorily required liability for late reporting
- 22 are Class 2 violations
 - Pose a moderate, indirect, or cumulative threat to water quality
 - Include negligent or inadvertent noncompliance with the potential to cause or allow the continuation of unauthorized discharge or obscuring past violations

IGP: ENFORCEMENT OVERVIEW (07/01/19 – 09/30/19)

- Statewide INDSTW violations from July 1, 2019 to September 30, 2019: **446**
- Region 5 violations: 138
 - All violations are within Region 5- Sacramento
 - 136 Class 3 violations
 - 2 Class 2 violations
- Region 8 (Santa Ana) leads the State with 170 violations
 - 165 Class 3 violations; 5 Class 2 violations
- <https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?inCommand=reset&reportName=PublicViolationSummaryReport> [Search: region, INDSTW, date range 07/01/19 - 09/30/19; accessed 10/27/19]

ADMINISTRATIVE CIVIL LIABILITY OVERVIEW

- Online database allows you to search for active, historical, withdrawn, or “all” ACL information by Program type (i.e., “INDSTW”, “CONSTW”, etc.)
- For July 1, 2018- June 30, 2019:
 - Pending/Completed INDSTW Statewide ACLs total \$48,773
 - Regions involved: Central Coast (Region 3); Santa Ana (Region 8)
- <https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/summACLRepSearch.do> [Search: All, INDSTW, both; accessed 10/27/19]

IGP: ACL OVERVIEW 07/01/18 - 06/30/19

Summary Administrative Civil Liability (ACL) Report

Enforcement Status: All
Program: INDSTW
Enforcement Address MMP: All
Effective Date: 07/01/2018 and 06/30/2019

<u>Region</u>	<u>Number of Actions</u>	<u>Liability Total</u>	<u>Liability Paid/Completed</u>	<u>Liability Pending</u>	<u>SEP Total</u>
3	<u>1</u>	\$5,248	\$5,248	\$0	\$0
8	<u>2</u>	\$43,525	\$2,350	\$41,175	\$0
TOTALS	<u>3</u>	\$48,773.00	\$7,598.00	\$41,175.00	\$0.00

IGP: ACL OVERVIEW FY 2017-18

- For July 1, 2017- June 30, 2018:
 - Pending/Completed Statewide ACLs total just over \$188,000 across 15 actions
 - \$117,500 SEP is an additional component of a Region 2 ACL
 - Regions involved: San Francisco (Region 2); Central Coast (Region 3); Los Angeles (Region 4); and Santa Ana (Region 8)
- <https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/summACLRepSearch.do> [Search: All, INDSTW, both; accessed 10/27/19]

IGP: ACL OVERVIEW FY 2017-18

Summary Administrative Civil Liability (ACL) Report

Enforcement Status: All
 Program: INDSTW
 Enforcement Address MMP: All
 Effective Date: 07/01/2017 and 06/30/2018

Region	Number of Actions	Liability Total	Liability Paid/Completed	Liability Pending	SEP Total	SEP Paid/Completed
2	4	\$136,500	\$136,500	\$0	\$117,500	\$117,500
4	5	\$12,500	\$1,500	\$11,000	\$0	\$0
8	5	\$20,224	\$20,224	\$0	\$0	\$0
9	1	\$19,059	\$0	\$19,059	\$0	\$0
TOTALS	15	\$188,283.00	\$158,224.00	\$30,059.00	\$117,500.00	\$117,500.00

SWITCHING GEARS:

CGP: THE NEXT ITERATION

- Current Construction General Permit (CGP) originally took effect on July 1, 2010
- Next round of CGP revisions will include implementation of TMDLs
- Fall/Winter 2019 - Anticipated release of proposed revised CGP
- Possible adoption of new permit after public comment period, early 2020?

CGP: THE NEXT ITERATION



IGP: HOW CAN WE HELP?

- Collaborate on strategy (attorney work product confidentiality)
- Carefully review all documents before filing with SMARTS
- If you receive a 60-day notice:
 - contact your trusted advisors immediately (attorney, storm water professionals, etc.)
 - A valid lawsuit cannot be filed until the 60 days have passed so take the time to correct any violations and develop a strategy for a potential citizen suit

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